



FEDERAL TRADE COMMISSION

16 CFR Part 315

Public Workshop Examining Contact Lens Marketplace and Analyzing Proposed Changes to the Contact Lens Rule

AGENCY: Federal Trade Commission.

ACTION: Public workshop and request for public comment.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is holding a public workshop relating to its December 7, 2016 Notice of Proposed Rulemaking (“NPRM”) announcing proposed changes to the Contact Lens Rule. The workshop will explore issues relating to competition in the contact lens marketplace, consumer access to contact lenses, prescription release and portability, and other issues raised in comments received in response to the NPRM.

DATES: The public workshop will be held on March 7, 2018, from 9:00 a.m. until 5:00 p.m., at the Constitution Center Conference Center, located at 400 7th Street, SW, Washington, DC. Requests to participate as a panelist must be received by January 5, 2018. Any written comments related to the agenda topics or the issues discussed by the panelists at the workshop must be received by April 6, 2018.

ADDRESSES: Interested parties may file a comment or a request to participate as a panelist online or on paper, by following the instructions in the Filing Comments and Requests to Participate as a Panelist part of the **SUPPLEMENTARY INFORMATION** section below.

Write “Contact Lens Rule, 16 CFR Part 315, Comment, Project No. R511995” on your comment and “Contact Lens Rule, 16 CFR Part 315, Request to Participate, Project No. R511995” on your request to participate as a panelist. File your comment online at

<https://ftcpublic.commentworks.com/ftc/contactlensworkshop> by following the instructions on the web-based form. File your request to participate as a panelist by email to:

contactlensworkshop2018@ftc.gov. If you prefer to file your comment or request to participate on paper, mail your comment or request to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex F), or deliver your comment or request to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex F), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Elizabeth Delaney, Attorney, 202-326-2903, or Alysa Bernstein, Attorney, 202-326-3289, Federal Trade Commission, Division of Advertising Practices, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. INTRODUCTION

In 2003, Congress enacted the Fairness to Contact Lens Consumers Act.¹ Pursuant to the Act, the Commission promulgated the Contact Lens Rule (“Rule”), which went into effect on

¹ 15 U.S.C. 7601-7610 (Pub. L. 108-164).

August 2, 2004.² The Rule promotes competition in retail sales of contact lenses by facilitating consumers' ability to comparison shop for contact lenses. When a prescriber completes a contact lens fitting, the Rule requires that the prescriber provide the patient with a copy of her prescription. The Rule also requires that the prescriber verify or provide such prescriptions to authorized third parties, such as contact lens sellers.

In addition, the Rule places certain requirements on sellers. It mandates that sellers dispense contact lenses only in accordance with a valid prescription that is either presented to the seller or verified by direct communication with the prescriber.³ Sellers may not alter a prescription, but for private label contact lenses, may substitute identical contact lenses that the same company manufactures and sells under a different name.⁴

As part of its ongoing regulatory review program, the Commission published a Request for Comment in September 2015 seeking comment on: the economic impact of, and the continuing need for, the Rule; the benefits of the Rule to consumers; the burdens the Rule places on entities subject to its requirements; the impact the Rule has had on the flow of information to consumers; the degree of industry compliance with the Rule; the need for any modifications to increase its benefits or reduce its burdens or to account for changes in relevant technology; and any overlap or conflict with the Rule and other federal, state, or local laws or regulations.⁵ The

² Contact Lens Rule, 16 CFR 315.

³ 16 CFR 315.5(a).

⁴ 16 CFR 315.5(e).

⁵ Contact Lens Rule, Request for Comment, 80 FR 53272 (Sept. 3, 2015).

comment period closed on October 26, 2015, and the Commission received 660 comments.⁶

Virtually all commenters agreed that there is a continuing need for the Rule and that it benefits consumers and competition. The majority of commenters recommended some modifications to the Rule in order to maximize the benefits to consumers and competition, decrease the burden on businesses, protect consumers' eye health, or improve overall compliance with the Rule's existing requirements.

After reviewing the comments, the Commission published a Notice of Proposed Rulemaking ("NPRM") proposing to amend the Rule to require that prescribers obtain a signed acknowledgment after releasing a contact lens prescription to a patient, and maintain each such acknowledgment for a period of not less than three years.⁷ The Commission also proposed to strike the words "private label" from Section 315.5(e) of the Rule to conform the language of the Rule to that of the Act. The Commission sought public comment on these proposed amendments as well as several other issues, including: the use of patient portals to provide prescriptions; the provision of additional copies of a prescription to a patient; the amount of time required for a prescriber to respond to a request for a copy of a prescription; and additional information on

⁶ The comments are posted at: <https://www.ftc.gov/policy/public-comments/initiative-621>.

⁷ Contact Lens Rule, Notice of Proposed Rulemaking, Request for Comment, 81 FR 88526 (Dec. 7, 2016).

possible modifications to the Rule that could address issues raised about automated telephone calls. The Commission received over 4,100 comments in response.⁸

II. ISSUES FOR DISCUSSION AT THE WORKSHOP

As part of the Contact Lens Rule rulemaking, the FTC is hosting a public workshop to explore issues relating to competition in the contact lens marketplace, consumer access to contact lenses, prescription release and portability, and other issues raised in comments to the NPRM. The workshop will cover topics including: (1) Consumers' ability to comparison shop for contact lenses; (2) the use of electronic health records, patient portals, and other technology to improve prescription portability; (3) the interaction between the Contact Lens Rule and emerging telehealth business models; (4) the potential for new technology to improve the prescription verification process; and (5) modifications to the Contact Lens Rule to foster competition and maximize consumer benefits, including benefits to eye health.

A more detailed agenda will be published at a later date, in advance of the scheduled workshop.

III. PUBLIC PARTICIPATION INFORMATION

A. Workshop Attendance

The workshop is free and open to the public, and will be held at the Constitution Center, 400 7th Street, SW, Washington, DC. It will be webcast live on the FTC's website. For admittance to the Constitution Center, all attendees must show valid government-issued photo

⁸ The comments are posted at: <https://www.ftc.gov/policy/public-comments/2016/10/initiative-677>.

identification, such as a driver's license. Please arrive early enough to allow adequate time for this process.

This event may be photographed, videotaped, webcast, or otherwise recorded. By participating in this event, you are agreeing that your image—and anything you say or submit—may be posted indefinitely at www.ftc.gov or on one of the Commission's publicly available social media sites.

B. Requests to Participate as a Panelist

The workshop will be organized into panels, which will address the designated topics. Panelists will be selected by FTC staff. Other attendees will have an opportunity to comment and ask questions. The Commission will place a transcript of the proceeding on the public record. Requests to participate as a panelist must be received on or before January 5, 2018, as explained in Section IV below. Persons selected as panelists will be notified on or before January 19, 2018.

Disclosing funding sources promotes transparency, ensures objectivity, and maintains the public's trust. If chosen, prospective panelists will be required to disclose the source of any support they received in connection with participation at the workshop. This information will be included in the published panelist bios as part of the workshop record.

C. Electronic and Paper Comments

The submission of comments is not required for participation in the workshop. If a person wishes to submit paper or electronic comments related to the agenda topics or the issues discussed by the panelists at the workshop, such comments should be filed as prescribed in

Section IV, and must be received on or before April 6, 2018.

IV. FILING COMMENTS AND REQUESTS TO PARTICIPATE AS A PANELIST

You can file a comment, or request to participate as a panelist, online or on paper. For the Commission to consider your comment, we must receive it on or before April 6, 2018. For the Commission to consider your request to participate as panelist, we must receive it by January 5, 2018. Write “Contact Lens Rule, 16 CFR Part 315, Comment, Project No. R511995” on your comment and “Contact Lens Rule, 16 CFR Part 315, Request to Participate, Project No. R511995” on your request to participate. Your comment -- including your name and your state -- will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at <http://www.ftc.gov/os/publiccomments.shtm>.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/contactlensworkshop>, by following the instructions on the web based form. When this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

Because your comment will be placed on the publicly accessible FTC Website at <https://www.ftc.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of

birth; driver's license number or other state identification number, or foreign country equivalent; passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential" -- as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) -- including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website -- as legally required by FTC Rule 4.9(b) -- we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Requests to participate as a panelist at the workshop should be submitted electronically to contactlensworkshop2018@ftc.gov, or, if mailed, should be submitted in the manner detailed

below. Parties are asked to include in their requests a brief statement setting forth their expertise in or knowledge of the issues on which the workshop will focus as well as their contact information, including a telephone number and email address (if available), to enable the FTC to notify them if they are selected.

If you file your comment or request on paper, write “Contact Lens Rule, 16 CFR Part 315, Comment, Project No. R511995” on your comment and on the envelope and “Contact Lens Rule, 16 CFR Part 315, Request to Participate, Project No. R511995,” on your request and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex F), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex F). If possible, submit your paper comment or request to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 6, 2018. The Commission will consider all timely requests to participate as a panelist in the workshop that it receives by January 5, 2018. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

**V. COMMUNICATIONS BY OUTSIDE PARTIES TO COMMISSIONERS OR
THEIR ADVISORS**

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. See 16 CFR 1.26(b)(5).

By direction of the Commission.

Donald S. Clark,

Secretary.

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